

1       **SETTLEMENT AGREEMENT REGARDING ATTORNEYS' FEES AND COSTS**

2           This Settlement Agreement Regarding Attorney's Fees and Costs ("Agreement") is made  
3 and entered into by and among the County of Los Angeles ("County") and La Vina Homeowners'  
4 Association ("HOA") (referred to herein collectively as the "Parties").

5                               **RECITALS**

6           **WHEREAS**, on July 21, 2005, Plaintiff County filed a lawsuit against Defendant HOA in  
7 Los Angeles Superior Court, case number BC 336895 (consolidated with case number 035654)  
8 (hereinafter the "Lawsuit") seeking to require compliance with County entitlement documents and  
9 the Declaration of Restrictions ("CC&Rs") requiring public hiking and equestrian trails in the  
10 open space parcels surrounding the La Vina development;

11          **WHEREAS**, following a 23-day trial, the Trial Court ruled for the County on all claims  
12 and entered Judgment requiring the HOA to dedicate two public trail easements to the County.  
13 The County moved for costs and the HOA moved to tax costs. The Trial Court awarded \$46,388  
14 in costs;

15          **WHEREAS**, following a motion by the County, the Trial Court held that the CC&Rs  
16 governing the La Vina development provide that the County was entitled to attorneys' fees as the  
17 prevailing party in an amount of \$783,944;

18          **WHEREAS**, the HOA appealed from this Court's judgment in favor of the County and  
19 from the award of attorneys fees and on April 5, 2010, the Court of Appeals affirmed in full this  
20 Court's judgment and attorney fee award;

21          **WHEREAS**, the HOA chose not to seek review from the California Supreme Court and  
22 the Judgment, attorneys' fee award, and award of costs are now final;

23          **WHEREAS**, the County is entitled to seek additional attorneys' fees for litigating the case  
24 on appeal and has filed a motion with the Trial Court seeking attorneys' fees totaling \$131,395 for  
25 time spent litigating on the case on appeal;

26          **WHEREAS**, California law provides that interest accrues on an unpaid attorneys' fees  
27 order and award of costs at an annual rate of ten percent (10%);

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1       **WHEREAS**, the HOA has informed the County that it is in a dispute with its insurance  
2 company over the payment of the County's attorneys' fees and costs awarded by the Trial Court;

3       **WHEREAS**, to avoid the costs and uncertainties involved with further litigating the fees  
4 and costs, the Parties desire to settle and compromise the issue of the attorneys' fees and costs due  
5 to the County for litigating the Lawsuit as agreed herein; and,

6       **NOW, THEREFORE**, in consideration of the promises, covenants, representations, and  
7 agreements herein contained, the Parties agree as follows:

8       **1.       HOA payment to County.**

9       Within ten (10) calendar days after execution of this Agreement, the HOA will cause to be  
10 delivered to the County a total payment in the amount of Eight Hundred and Sixty-two Thousand  
11 Dollars (\$862,000) via check(s) payable to the "County of Los Angeles" and shall be delivered to  
12 the Office of the County Counsel, 648 Kenneth Hahn Hall of Administration, 500 West Temple,  
13 Los Angeles, California 90012, Attn: Scott Kuhn.

14       **2.       Agreement Void if Full Payment Not Received within Ten Days or if Full**  
15 **Payment Does Not Clear Bank.**

16       If full payment of Eight Hundred and Sixty-two Thousand Dollars (\$862,000) is not  
17 received by the County from the HOA within 10 calendar days after execution of this Agreement,  
18 or if the full payment does not clear the bank when it is deposited by the County, this Agreement  
19 shall be void and the parties agree that they will return to the same legal positions as they were  
20 prior to entering into this Agreement.

21       **3.       This Agreement Only Impacts the Requirements in the Judgment that the**  
22 **HOA pay the County's Costs and Attorneys' Fees and Does Not Impact the Trail Easement**  
23 **Requirements, Nor any Other Requirements in the Trial Court's Judgment.**

24       This Agreement only impacts the payment of attorneys' fees and costs for the County's  
25 litigation of the Lawsuit and does not impact in any way any other part of the Judgment, including,  
26 but not limited to, that the HOA must comply with the trail requirements contained in the Specific  
27 Plan, Conditional Use Permit, Vesting Tentative Tract Map, and Environmental Impact Reports  
28 and that a permanent injunction is entered ordering the HOA to dedicate two permanent public

1 trail easements to the County that substantially conform to the trails depicted on the February 13,  
2 1996 Vesting Tentative Tract Map and on the February 13, 1996 Conditional Use Permit –  
3 Revised Exhibit "A".

4           **4. County Limited Release of HOA in Exchange for Payment of \$862,000.**

5           In exchange for the payment of Eight Hundred and Sixty-two Thousand Dollars  
6 (\$862,000), the County hereby releases and forever discharges the HOA and the HOA's respective  
7 employees, agents, predecessors, successors, assigns, attorneys, insurance carriers, principals, and  
8 representatives (hereinafter "HOA Released Parties") from any and all claims by the County for  
9 payment of the County's attorneys' fees and costs for litigating the Lawsuit.

10           **5. HOA Release of County.**

11           For good and valuable consideration, the adequacy of which is hereby acknowledged, the  
12 HOA hereby releases and forever discharges the County and the County's respective departments,  
13 divisions, elected officials, appointed officials, employees, agents, predecessors, successors,  
14 assigns, attorneys, insurance carriers, principals, and representatives (hereinafter "County  
15 Released Parties") from any and all claims, disputes, demands, liabilities, causes of action, debts,  
16 obligations, losses, or damages of any nature, character, or description whatsoever, whether  
17 known or unknown, suspected or unsuspected, anticipated or unanticipated, which HOA ever had,  
18 now have, or may have, or shall or may hereafter acquire, arising out of the Lawsuit, regardless of  
19 whether any unknown, unsuspected, or unanticipated claim would materially affect HOA's  
20 decision to settle or compromise.

21           **6. HOA Waiver of Civil Code Section 1542.**

22           The HOA hereby expressly, voluntarily, and knowingly waive, relinquish, and abandon  
23 each and every right, protection, and benefit to which the HOA would be entitled to, now, or at  
24 any time hereafter, including all rights under section 1542 of the California Civil Code, which  
25 provides as follows:

26                   **"A general release does not extend to claims which the creditor**  
27                   **does not know or suspect to exist in his or her favor at the time**  
28                   **of executing the release, which if known by him or her must**  
                      **have materially affected his or her settlement with the debtor."**

1 The HOA expressly waives the provisions of California Civil Code section 1542 and  
2 acknowledges that the HOA is aware that facts or claims, in addition to or different from those that  
3 are now known or believed to exist with respect to the County Released Parties arising from the  
4 facts alleged in the County's First Amended Complaint may be discovered in the future, and that it  
5 is the HOA's intention to fully and forever settle and release any and all such matters, claims, and  
6 disputes, whether known or unknown.

7       **7. Entire Agreement.** This Agreement contains the entire agreement and  
8 understanding among the Parties, and supersedes and replaces all other prior negotiations,  
9 proposed agreements, and agreements, whether written or oral.

10       **8. Amendment.** No amendment, modification, waiver, or termination of this  
11 Agreement shall be binding unless executed in writing by both Parties.

12       **9. Choice of Law.** This Agreement shall be construed, interpreted, and enforced in  
13 accordance with the laws of the State of California. Any legal or administrative action arising out  
14 of this Agreement shall be conducted in Los Angeles County, California.

15       **10. Action to Enforce.** If either Party brings an action or commences any proceedings  
16 to enforce or interpret the provisions of this Agreement, or an action or proceeding against one or  
17 more of the County Released Parties or HOA Released Parties for any claim released herein, the  
18 prevailing Party shall recover its reasonable attorney's fees and other expenses incurred in  
19 connection with any such action or proceeding, in addition to any other relief to which such Party  
20 may be entitled.

21       **11. No Reliance on Others.** The Parties warrant and represent that they are not  
22 relying and have not relied on any representation or statement made by the other Party with  
23 respect to this Agreement nor with regard to their rights or asserted rights, and have had an  
24 opportunity to seek advice of counsel of their choosing and hereby assume the risk of all mistakes  
25 of fact.

26       **12. Counterparts.** This Agreement, and any and all amendments to it, may be  
27 executed in counterparts, each of which shall be deemed an original, and all of which, taken  
28 together, shall constitute a single instrument.

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2 13. **Authority.** In signing below, each of the Parties represents it has all the requisite  
3 power to carry out its obligations under this Agreement, and that execution, delivery, and  
4 performance of this Agreement have been duly authorized by such Party.

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6 Dated: October 5, 2010

COUNTY OF LOS ANGELES

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Scott Kuhn, Senior Deputy County Counsel  
OFFICE OF THE COUNTY COUNSEL

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Attorneys for COUNTY OF LOS ANGELES

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Dated: September 21, 2010

LA VINA HOMEOWNERS ASSOCIATION

By:   
Ken Smith  
President  
LA VINA HOMEOWNERS ASSOCIATION

Approved as to Form:

H. Doug Galt  
WOOLS & PEER

Attorneys for LA VINA HOMEOWNERS  
ASSOCIATION

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6 Dated: \_\_\_\_\_, 2010

COUNTY OF LOS ANGELES

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\_\_\_\_\_  
Scott Kuhn, Senior Deputy County Counsel  
OFFICE OF THE COUNTY COUNSEL

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Attorneys for COUNTY OF LOS ANGELES

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Dated: \_\_\_\_\_, 2010

LA VINA HOMEOWNERS ASSOCIATION

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By: \_\_\_\_\_

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Ken Smith

President

LA VINA HOMEOWNERS ASSOCIATION


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Approved as to Form:

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H. Doug Galt

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WOOLS & PEER

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Attorneys for LA VINA HOMEOWNERS  
ASSOCIATION

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